



GOVERNMENT GAZETTE

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General Notice

MINISTER OF REGIONAL AND LOCAL GOVERNMENT, HOUSING AND RURAL DEVELOPMENT

No. 73

2011

LOCAL AUTHORITIES TENDER BOARD REGULATIONS: LOCAL AUTHORITIES ACT, 1992

Under section 94A of the Local Authorities Act, 1992 (Act No. 23 of 1992), I have -

- (a) made the regulations as set out in the Schedule; and
- (b) repealed the Tender Board Regulations published in Government Notice 30 of 15 February 2001.

J. EKANDJO
MINISTER OF REGIONAL AND LOCAL
GOVERNMENT, HOUSING AND RURAL
DEVELOPMENT

Windhoek, 28 March 2011

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PART I
PRELIMINARY

Definitions

1. In these regulations, unless the context otherwise indicates, any word or expression defined in the Act has that meaning, and -

“agreement” means an agreement entered into under regulation 6(1)(a);

“*bona fide* Namibian dealer or merchant” means any person who, at the time of tendering -

- (a) is a Namibian citizen lawfully conducting business in Namibia;
- (b) is a company incorporated in Namibia in terms of the Companies Act, 2004 (Act No. 28 of 2004) of which the majority of its shareholders are Namibian citizens; or
- (c) is a close corporation registered in Namibia in terms of the Close Corporations Act, 1988 (Act No. 26 of 1988) of which the majority of its members are Namibian citizens.;

“chairperson” means the chairperson of a local tender board;

“closing date and time” means the closing date and time specified in a title of tender for the receipt of tenders;

“committee” means a committee appointed under regulation 11(1);

“company” means a company incorporated in terms of the Companies Act, 2004 (Act No. 28 of 2004), and includes any other body corporate;

“contractor” means any person from whom a tender or quotation has been accepted by a local tender board and with whom an agreement, has been entered into and it includes a consultant or consultancy;

“construction” means all work associated with the construction, reconstruction, repair or renovation of a building, structure or works;

“costs of materials” means the cost of materials determined in accordance with regulation 24;

“department” means a department established under subsection (1) of section 28 of the Act;

“head of a department” means the head of the department designated under subsections (2) and (3) of section 28 of the Act and departmental head has the same meaning;

“efficiency committee” means the committee of the local tender board established under regulation 11 (1);

“general agreement” means an agreement entered into for the furnishing of goods or the rendering of services to, or the disposal of, property of a local authority council over a period of time specified in that agreement;

“goods” includes raw materials, products, equipment and other physical objects in any state or form, and electricity;

“goods produced or manufactured in Namibia” means goods which have a local content of not less than ten per cent of the manufacturing costs of the goods, as represented by materials produced, direct labour performed and the last process of manufacture of the goods accomplished, in Namibia, provided -

- (a) the last process of manufacture is substantial and sufficient to change the nature of the product and give it new characteristics;
- (b) the final product represents a completely new product or at least an important stage in the process of manufacture; and
- (c) each type of article qualifies separately in its own right, but does not, in relation to the process of manufacture, include -
 - (i) any packaging or bottling, or placing in flasks, bags, cases or boxes, or fixing on cards or boards, of goods, or any other simple packaging procedure;
 - (ii) any assembling of goods involving the construction of an article by putting together finished components which may require slight modifications, such as painting or trimming, before assembling, but excluding gluing, screwing, nailing, sewing and minor welding and riveting procedures, with or without the addition of local parts or components of minor importance such as screws, nuts and bolts;
 - (iii) any simple mixing or blending procedure of imported ingredients which does not result in the manufacture of a new or different product; and
 - (iv) any procedure to ensure the preservation of goods in good condition during transportation or storage, such as ventilation, spreading out, drying, freezing or

placing in brine, sulphur-dioxide or other aqueous solutions, the removal of damaged parts or any cleaning or similar procedure;

“local content”, in relation to goods produced or manufactured in Namibia, means such percentage of the manufacturing costs of such goods in their final state of manufacture as represented by the costs of -

- (a) any materials grown, produced or manufactured in Namibia and which were used in the manufacture of the goods; and
- (b) any direct labour involved in the manufacture of the goods;

“local tender board” means the tender board of a local authority council concerned, established in terms of regulation 2(1), and includes the efficiency committee of a local tender board established under regulation 11(1) and “board” has a corresponding meaning

“manufacturing costs” means the manufacturing costs of goods determined in accordance with regulation 25;

“member of a local tender board” includes an alternate member acting as such a member, as the case may be, appointed by or in terms of regulation 2(4);

“Namibian citizen” includes a person who is domiciled in Namibia as contemplated in section 22 of the Immigration Control Act, 1993 (Act No. of 1993);

“procure” means to acquire goods or services by any means, including by purchase, rental, lease or hire-purchase, and “procurement” has a corresponding meaning;

“profession” means a profession whose members’ conduct is subject to control by a council or like body established by an Act of Parliament;

“regional council” means a regional council as defined in section 1 of the Regional Councils Act, 1992 (Act No. 22 of 1992);

“sample” means a sample of goods to be procured or which are offered for procurement;

“secretary” means the secretary of a local tender board;

“services” includes any construction, and “tender services” has a corresponding meaning;

“the Act” means the Local Authorities Act, 1992 (Act No. 23 of 1992); and

“title of tender” includes the contents of an invitation to tender and any General or Special Conditions of Contract may be incorporated by reference in the title of tender.

PART 2 LOCAL TENDER BOARDS

Establishment and composition of local tender boards

2. (1) There is hereby established a tender board for each local authority council to be known as a local tender board which must provide tender services to the local authority council for which it is established.

(2) Subject to subregulation (3), a local tender board consists of-

- (a) in the case of a municipal council or town council -
- (i) the town clerk thereof, who is the chairperson;
 - (ii) four staff members, other than the town clerk, of the municipal council or town council, nominated by the town clerk and appointed in writing by the municipal council or town council concerned of which one staff member must be the head of department of the department dealing with the finances of a municipal council or town council; and
 - (iii) any two persons, other than staff members or a member of the municipal council or town council concerned, resident in the local authority area concerned, appointed in writing by the municipal council or town council, and who must be Namibian citizens and who may be elected by the municipal or town council to represent a sector of the public as determined by the municipal or town council;
- (b) in the case of a village council -
- (i) the secretary of the village council, who is the chairperson;
 - (ii) three staff members, other than the secretary, of the village council, nominated by the secretary and appointed in writing by the village council concerned of which one staff member must be in charge of the finances of the village council; and
 - (iii) one person resident in the village area concerned, other than a staff member or member of the village council concerned, appointed in writing by the village council, who must be a Namibian citizen and who may be elected by the municipal or town council to represent a sector of the public as determined by the village council;.
- (3) A local authority council must -
- (a) appoint, with due regard to subregulation (2), for each member of a local tender board appointed by it in terms thereof, an alternate member, nominated in so far as applicable in accordance with that subregulation, and an alternate member so appointed may during the absence of the member of the local tender board with respect to whom he or she is appointed, or such member's inability to act as member, act as member in place of that member; and
 - (b) designate any one of the members appointed in terms of subregulation(2)(a)(ii) or (2)(b)(ii) of a local tender board as vice-chairperson thereof.

(4) In any proceedings arising from these regulations the local authority council concerned must be cited as plaintiff or defendant or as applicant or respondent, as the case may be, and not the local tender board or the chairperson of the local tender board.

Period of and vacation of office of members of local tender boards

3. (1) A member of a local tender board who is a staff member of the local authority council holds office at the discretion of the local authority council, and any other member of a local tender board holds office for a period of three years, but this period may be extended for a further period of two years and on expiry of the period the member may be reappointed.

- (2) A member of a local tender board whose period of office has expired, is eligible for reappointment.
- (3) A member of a local tender board vacates his or her office if he or she -
- (a) ceases to be a staff member of the local authority council concerned, or in the case of a member of a local tender board appointed in terms of regulation 2(2)(a)(iii) or (b)(iii) ceases to qualify to represent the public sector for whom the member was elected or resigns by written notice addressed to the chairperson;
 - (b) has without sufficient reasons or the leave of the local tender board concerned, been absent from three consecutive meetings of that board;
 - (c) is removed from office under subregulation (4);
 - (d) is convicted of -
 - (i) any offence in respect of which he or she is sentenced to imprisonment without the option of a fine, whether or not such imprisonment is suspended; or
 - (ii) any offence under regulation 5(2); or
 - (e) is an unrehabilitated insolvent; or
 - (f) is of unsound mind and has been so declared by a competent Court.
- (4) A local authority council may remove at any time and after the member concerned has been afforded an opportunity to be heard by the council, a member of a local tender board appointed by it from office for reasons which in the opinion of the local authority council concerned, render such member unsuitable to serve on the tender board concerned.
- (5) A vacancy on a local tender board must be filled following the procedures relating to the initial appointment of the member of the local tender board who has vacated his or her office.

Remuneration of members of local tender board

4. The Minister must, in the case of the municipal council of a municipality referred to in Part II of Schedule 1 or a town council or village council, from time to time determine the remuneration and allowances payable to a member of a local tender board who is not a staff member and the remuneration and allowances must be paid by the local authority council concerned.

Disclosure of interest

5. (1) A member, an alternate member or a member of a committee of a local tender board who -
- (a) has a direct or an indirect interest or intends to become directly or indirectly interested in or considers entering into any tender or contract with the local authority in question or has entered into or in any other matter administered by or under the control of such local authority council; or
 - (b) has a direct or an indirect interest in any matter, which may cause a conflict of interests in the performance of the functions of such member, alternate member or member of a committee, must declare the particulars of that interest to the local tender board in writing as soon as the interest arises.

(2) A member, an alternate member or a member of a committee may not take part in a discussion of, or vote on, any matter at a meeting of the Board or of a committee, if in respect of that matter the member, alternate member or member of a committee has an interest referred to in subsection (1).

(3) Subsection (1) applies to any staff member who drafts, evaluates, supervises, administers a submission to a local tender board, who must forthwith and in writing inform the chairperson of the local tender board, the departmental head or his or her delegate or to his or her supervisor to disclose such an interest and such disclosure must be made known before the relevant tender is drafted, evaluated, supervised, administered or submitted to the local tender board and subsection (1) also applies to any departmental head or delegate or supervisor, who is aware or should be aware of such conflict in interest of a staff member that must be disclosed.

(4) Any member, alternate member or a member of a committee of a local tender board or a staff member of a local authority who contravenes or fails to comply with a provision of subregulation (1) or (3) commits an offence and on conviction be liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Powers and functions of local tender boards

6. (1) A local tender board is solely responsible, unless otherwise provided in the Act or in any other law, for the procurement of goods and services for a local authority council, and, subject to the Act or any other law, for the arrangement of the letting or hiring of anything or the acquisition or granting of any right for or on behalf of a local authority council, or for the disposal of property of a local authority council, and for that purpose but subject to subregulations (2) or (3), may -

- (a) on behalf of a local authority council enter into an agreement with any person within or outside Namibia for the furnishing of goods or services to a local authority council or for the letting or hiring of anything or the acquisition or granting of any right for or on behalf of a local authority council or for the disposal of property of a local authority council;
- (b) with a view to enter into an agreement contemplated in paragraph (a), invite tenders and determine the manner in which and the conditions subject to which such tenders must be submitted;
- (c) inspect and test or cause to be inspected and tested goods and services which are offered or which are or have been furnished in terms of an agreement entered into under this section, or which are offered for hire;
- (d) accept subject thereto that sufficient funds have been provided for that purpose on the budget of the local authority council or reject any tender for the purpose of entering into of an agreement under paragraph (a);
- (e) take steps or cause steps to be taken to enforce any agreement entered into under paragraph (a);
- (f) on behalf of a local authority council withdraw from or cancel any agreement entered into under paragraph (a) and, if appropriate, claim and recover damages;
- (g) subject to subregulation (2) and on such conditions as it may determine, exempt any person with whom an agreement has been entered into under paragraph (a) from compliance with such agreement, or to condone the failure of that person to comply with any provision of such agreement;

- (h) subject to subregulation (2), negotiate a settlement with any person referred to in subparagraph (g), or amend such agreement, with the approval of that person;
- (i) authorise the committee established under regulation 11(1) acting on behalf of a local tender board to consider and accept or reject any quotation or tender or application for prequalification, as the case may be, submitted in respect of the procurement of goods and services of a value not exceeding -
 - (i) N\$500 000 in the case of a municipal council of a municipality referred to in Part I of Schedule I to the Act;
 - (ii) N\$100 000 in the case of a municipal council of a municipality referred to in Part II of Schedule I to the Act;
 - (iii) N\$50 000 in the case of a town council; or
 - (iv) N\$25 000.00 in the case of a village council,
- (j) exercise such other powers as may be conferred upon it by or under these regulations or any other law.

(2) The local authority council concerned may issue general policy, reporting, monitoring directives or directives in respect of levels of authority to the local tender board relating to the procurement of goods and services for the local authority council and for the cancellation or settlement of agreements entered into in respect of such goods and services and any matter ancillary thereto.

(3) No exemption, condonation, settlement or amendment which may be to the prejudice of a local authority council may be granted, negotiated or made under paragraph (g) or (h) of subregulation (1) without the prior approval of the local authority council concerned.

(4) A local authority council must take the final decision under paragraphs (e), (f) of subregulation (1) or in respect of any matter referred to them under regulation (3).

(5) It is the duty of the department, on whose behalf goods or services are being procured, to advise the local tender board concerning the exercise of its powers under paragraphs (c), (d), (e), (f), (g) or (h) of subregulation (1).

Designation of secretary to local tender and powers and functions of secretary

7. (1) The chief executive officer must in writing designate as secretary of the local tender board concerned, any qualified staff member of the local authority council in respect of which the local tender board is established and must in writing designate another qualified staff member of the local authority to act as secretary in the absence or inability of the secretary or to designate qualified staff members to assist the secretary in the exercise in his or her functions.

(2) It is the duty of the secretary of the local tender board or the qualified staff member delegated by the chief executive officer to act on behalf of the secretary to

- (a) attend every meeting of the local tender board unless excused by the chairperson or instructed by the local tender board to temporarily leave any such meeting and the reasons for such excuse or absence are minuted;
- (b) publish notices in terms of the Act and the regulations and issue upon request and against the payment of certain fees tender documents in consultation with the

department concerned in every case, but subject thereto that engineering, scientific, or other tenders requiring specialist knowledge and experience must be prepared, or caused to be prepared, by the department concerned;

- (c) receive at a predetermined location and time, the submitted tenders, officiate at the opening of same and register all tenders so received;
- (d) prepare agenda's for, and minutes of, meetings of the local tender board, and distribute the same to members of the local tender board, unless the town clerk or village secretary determines otherwise;
- (e) submit tenders received to the department concerned for evaluation and recommendation to the local tender board as to which tender to accept, if any;
- (f) check in a fair, reasonable and impartial manner whether every evaluation and recommendation made under paragraph (d) complies with the provisions of these regulation and any directive issued hereunder and to advise, after consultation with the department concerned, the local tender board thereon, but subject thereto that engineering, scientific, or other tenders requiring specialist knowledge and experience must be prepared, or caused to be prepared, and evaluated and recommended to the local tender board by the department concerned;
- (g) declare any personal interest or conflict of interest with regard to any tender mutatis mutandis the provisions of regulation 5, before such tender is discussed by the local tender board;
- (h) communicate in writing to successful and unsuccessful tenderers the outcome of such tenders;
- (i) discuss contract arrangements with prospective tenders and contractors only in consultation with the head of the department concerned or his or her nominee;
- (j) secure, control, handle, archive, file and treat all tenders received, correspondence, documents, matters and decisions of the local tender board with the utmost confidentiality and security;
- (k) submit approved minutes of the local tender board resolutions to the local authority council for information within 30 days from the date of the meeting in which the minutes were approved; and
- (l) carry out any other duties imposed on him or her under these regulations or conditions of service or personnel rules of such local authority.

Performance of powers and functions of local tender boards

8. (1) A local tender board may make recommendations to the local authority council concerned in connection with the issue of directives relating to the procurement of goods and services, the letting or hiring of anything, the acquisition or granting of any right and the disposal of property of a local authority council, as contemplated in regulation 6(2).

- (2) A local tender board may -
 - (a) obtain, in performing its functions, such expert or technical advice as it may deem necessary;

(b) request, if it suspects any irregularity with regard to the submission to that board by any person of tenders, that person to prove to the satisfaction of that board that the irregularity (if any), has been rectified.

(3) A local tender board may -

(a) if it is satisfied that -

(i) a tenderer -

(aa) has amended or withdrawn a tender after the closing date for receipt of tenders, but before he or she has been notified of its acceptance; or

(bb) has failed to enter into an agreement or to furnish security in the circumstances contemplated in regulation 19(3);

(cc) has on more than two occasions submitted tenders which contain incorrect preferences as contemplated in regulation 28 and who continues claiming such preferences although the secretary to the local tender board informed the tenderer accordingly;

(dd) has been proven to have contravened the provisions of regulation 19(3) during the commissioning of any other tender invited, or

(ee) has, in relation to the allocation of a tender or the entering of or during the duration of an agreement, been involved in a corrupt practice as defined under the Anti Corruption Act, 2003 (Act 8 of 2003) or has promised, lobbied, offered or given, any bribe, commission, gift, loan, benefit or any other compensation whatsoever or has been involved in theft or has acted in bad faith or in a fraudulent or in any other improper manner or has been, or

(ii) a contractor -

(aa) fails or has failed to comply with any of the terms and conditions of an agreement, or performs or has performed unsatisfactorily under, an agreement; or

(bb) has promised, lobbied, offered or given, in relation to the allocation of a tender or the entering into of an agreement, any bribe, commission, gift, loan, benefit or any other compensation whatsoever or has acted in bad faith or in a fraudulent or in any other improper or corrupt manner,

in addition to any other legal remedy it may have, decide not to consider during such period of time as that board may determine, any tender of the tenderer or contractor concerned or any tender of an association, partnership, company or closed corporation of whom the tenderer or contractor is the sole shareholder or member or holds or effectively controls the majority share, as the case may be;

(b) at any time vary or set aside any restriction imposed by it under paragraph (a).

(4) A restriction imposed under subregulation (3)(a) on any tenderer or contractor, as the case may be, may in addition be imposed on any other person who a local tender board is satisfied -

- (a) exercises or has exercised or may exercise, whether wholly or partly, control over the tenderer or contractor concerned; or
 - (b) is or was directly or indirectly associated with that tenderer or contractor.
- (5) If a local tender board -
- (a) imposes a restriction on any tenderer or contractor under subregulation (3)(a) or any other person under subregulation (4); or
 - (b) varies or sets aside under subregulation (3)(b) any restriction so imposed, that board must in writing notify the local authority council concerned of such restriction, variation or setting aside, as the case may be.
- (6) If an agreement has been entered into with any contractor on the strength of information furnished by the contractor which information, after the entering into of such agreement, is proven incorrect information, a local tender board may, in addition to any other legal remedy it may have -
- (a) recover from the contractor any expenses, loss or damages incurred or suffered by the local authority council concerned as a result of the entering into of the agreement on the strength of such incorrect information furnished; or
 - (b) by written notice sent to the contractor by prepaid registered post addressed to the contractor's last known address, impose on the contractor a penalty not exceeding five per cent of the monetary value of the agreement, which penalty constitutes a debt due to the local authority council concerned and may be recovered from any moneys (if any), owing to the contractor by that local authority council; or
 - (c) recover the expenses, loss or damages incurred or suffered referred to in paragraph (a), and impose the penalty referred to in paragraph (b).
- (7) If an agreement -
- (a) provides for an increase of tender prices, a local tender board may, on receipt of a written request from the contractor concerned made to that board within 60 days after the coming into operation of any such price increase, give effect to the increase of any tender price in accordance with the terms of the agreement, but subject to these regulations subject thereto that sufficient funds have been provided for that purpose on the budget of the local authority council;
 - (b) does not provide for an increase of tender prices, a local tender board may, if the contractor concerned satisfies that board that any such price increase is the direct result of unforeseen circumstances resulting in the performance of the agreement in a loss to the contractor, act in accordance with regulation 6(1)(h) subject thereto that sufficient funds have been provided for that purpose on the budget of the local authority council.
- (8) Any action for the recovery of any expenses, loss, damages or penalty referred to in subregulation (6) may be instituted in any competent court by the local tender board on behalf of the local authority council concerned.
- (9) In this regulation -
- “contractor”, in relation to a restriction, includes a director, an employee or agent of a contractor or such contractor or director, subsequent to the decision taken under this

regulation, being part of or has established a new company, close corporation and in which such contractor has a more than 25% shareholding or interest; and

“tenderer”, in relation to a restriction, includes a director, an employee or agent of a tenderer or such director subsequent to the decision taken under this regulation, being part of or has established a new company, close corporation or any other legal entity being and in which such tenderer has a more than 25% shareholding or interest and which tendered under these Regulations.

Meetings of local tender boards and procedures thereof

9. (1) Meetings of a local tender board must be held on such dates and at such times and venues as the chairperson may determine from time to time, and any meeting so convened may be adjourned or postponed by the chairperson.

(2) Four members of a local tender board of a municipal council and a town council, or three members of a local tender board of a village council, as the case may be, form a quorum for any meeting of the local tender board concerned.

(3) The chairperson must preside at every meeting of a local tender board, and if the chairperson is absent, the vice-chairperson must preside at such meeting, and if both the chairperson and the vice-chairperson are absent from such meeting, the members of the local tender board present thereat may elect under the chairpersonship of the secretary one of their number to preside at such meeting.

(4) Any member of a local tender board present at a meeting of that board is obliged to cast, subject to these regulations, a vote in respect of any matter which is being put to the vote and in respect of which that member may legally cast a vote.

(5) The chairperson at a meeting of a local tender board has, in the event of an equality of votes, a casting vote in addition to his or her deliberative vote.

(6) The number of members of a local tender board voting for and against any decision must be entered in the minutes of the meeting, if so decided at the meeting.

(7) The chairperson at a meeting of a local tender board may withdraw, with the approval of the local tender board, any matter before it has been put to vote.

(8) All discussions at meetings of, and all matters considered and decisions arrived at by, a local tender board must be treated as confidential and may not be disclosed by any member thereof, or by any staff member or by any other person invited to provide expert advice to a local tender board, unless the prior approval of that board has been obtained and entered in the minutes of the meeting.

(9) Decisions of a local tender board must be conveyed in writing to the tenderer concerned by the secretary or person acting as such in such manner as the local tender board may determine from time to time.

Decisions of local tender boards

10. (1) No decision of a local tender board or act performed by authority of a local tender board is invalid by reason only -

(a) of a vacancy on a local tender board; or

- (b) of the fact that a person who was not entitled to sit as a member of a local tender board sat as such a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the required majority of the members who were present at the time and entitled to sit as members.
- (2) Decisions of a local tender board must be taken at meetings thereof, and a local tender board must keep minutes or cause minutes to be kept of each such meeting.
- (3) If, at the invitation of a local tender board, tenders are submitted to it for the purposes of concluding an agreement as contemplated in regulation 6(1), a local tender board -
- (a) may refuse or withdraw a tender which is not in the interest of a local authority and is not obliged to accept the lowest tender or, in the case of the disposal of property of a local authority council, the highest tender or any other tender;
- (b) may accept, where a tender relates to more than one item, the part of such tender only in respect of any one or more specific items or may accept a tender in circumstances as contemplated under subregulation 18(2)(b);
- (c) may accept any tender notwithstanding the fact that such tender was not made in response to any particular tender invitation, but which would serve as an extension of a tender already allocated and which would be on similar tender conditions and tender prices or which would form an extension to a subcontract of a tender already allocated and for which a contract was already entered into on similar tender conditions and tender prices;
- (d) may not accept a tender if the tender price is quoted in relation to the price tendered or quoted in all other tenders, or in relation to any price tendered or quoted in any specific tender.
- (4) A local tender board may accept any offer despite the fact that such offer was not made in response to any particular invitation to tender, if the local authority council concerned has approved such offer in a meeting open to the public.
- (5) A local tender board must keep, subject to regulation 18(7), in the minutes of the meeting record of the reasons for the acceptance or rejection or withdrawal or extension of a tender or subcontract of a tender.
- (6) No decision of a local tender board is invalid because it is based on a *bona fide* erroneous calculation or a *bona fide* incorrect application of these regulations or factual information presented or submitted to it, subject thereto that such calculation or application or information was not caused or influenced by the tenderer or any person acting on behalf of the tenderer.

Committees of local tender boards and delegation of powers

- 11.** (1) There is hereby established an efficiency committee of the local tender board consisting of -
- (a) the chairperson of the local tender board;
- (b) the staff member appointed under regulation 2(2)(a)(ii) and regulation 2(2)(b)(ii) in charge of the finances of the municipal council, town council or village council, respectively; and
- (c) the departmental head or his or her representative acting under regulation 21;

to consider, accept or reject quotations, tenders or pre-qualifications invited under regulation 6(1)(i) or under any exemption given under regulation 20(1) and such committee has, subject to necessary changes required by context, the same powers as the local tender board provided for under these regulations.

(2) A local tender board may in writing -

(a) appoint from time to time from among its members a committee to deal with any specific case on behalf of the local tender board and must designate a chairperson and a vice-chairperson for that committee; and

(b) delegate in writing to the committee appointed by it under paragraph (a) or to the chairperson of the local tender board, subject to such conditions as it may determine from time to time, any of the powers conferred upon it by or under these regulations.

(3) An appointment under subregulation (1) or a delegation under subregulation (2)(b) does not divest a local tender board of any power so delegated, and a local tender board may at any time vary or set aside any decision made thereunder by the committee.

Meetings of committees and procedures at meetings of committees

12. (1) The majority of the members of a committee constitutes a quorum for any meeting of such committee.

(2) If there is an equality of votes at any meeting of a committee the matter under consideration must be referred to the local tender board concerned for decision.

(3) Any member of a committee present at a meeting thereof is obliged to cast, subject to these regulations, a vote in respect of any matter which is being put to the vote and in respect of which he or she may legally cast a vote.

(4) A committee must keep minutes, or cause minutes to be kept, of each meeting, and must timeously, having regard to the circumstances of each case, but before the next meeting of the committee, submit such minutes to the members of the local tender board concerned.

(5) The number of members of a committee voting for or against any decision must be entered in the minutes of the meeting if so decided at the meeting.

(6) The chairperson at a meeting of a committee may with the approval of the committee withdraw any matter before it has been put to vote.

(7) All discussions at meetings of a committee and all matters considered and decisions arrived at by a committee must be treated as confidential and may not be disclosed by any member of the committee, any staff member or any other person invited to provide expert advice to the committee, unless the prior approval of the committee has been obtained and entered in the minutes of the meeting.

(8) Decisions of a committee must be conveyed in writing to the person concerned by staff members designated in terms of regulation 21(1), or by the secretary or person acting as such in such manner as the committee may determine.

(9) The secretary of the local tender board must attend meetings of the local tender board and its committees but may only address the local tender board or any committee if requested to do so by the chairperson and has no voting power.

PART 3
LOCAL TENDER BOARD PROCEDURES

Invitation to tender and applications for prequalification

13. (1) Subject to the provisions of the Act or unless exempted in terms of regulation 20 from compliance with the required tender procedures, all quotations or tenders for the procurement of goods and services, the letting or hiring of things, the acquisition or granting of rights, or the disposal of property, for or on behalf of a local authority council, must be invited by a local tender board in accordance with subregulation (3) or 16, as the case may be.

(2) If a local tender board in any of the circumstances contemplated in paragraph (b) or (c) of regulation 20(1), elects not to adhere to the tender procedures prescribed by these regulations, it may invite tenders or cause tenders to be invited in any other manner it may deem appropriate.

(3) A local tender board must publish an invitation to tender, or in the case where tenderers have to pre-qualify, applications for prequalification, in the official language not less than once in at least two newspapers circulating in the local authority area concerned and the local tender board may determine additional or alternative means or manners electronically or otherwise of advertising tenders or prequalification tenders.

Submission of tenders

14. (1) Subject to regulation 17, a person who wishes to tender must submit the tender to a local tender board in such manner and form and within such period of time, but not less than 21 days after the date of the only or last publication of the invitation to tender, as may be determined by a local tender board.

(2) A tender submitted in terms of subsection (1) must be accompanied by such documents and information as a local tender board may require in the particular case.

(3) The estimated value of goods or services to be furnished -

(a) is the total value of such goods or services, as the case may be; and

(b) may not be subdivided in order to bring such value within the limits of regulation 20(1)(a).

(4) If a tenderer considers that a tender specification is unfair or aimed at giving preference to a specific product, trade mark or trade name, the tenderer may, before the closing date for receipt of tenders, object thereto in writing to a local tender board.

(5) A local tender board may reject or sustain an objection and if it sustains an objection made under subregulation (4) it must invite tenders afresh in respect of any amended specification.

(6) If an objection is received under subregulation (4), the tenders received on the closing date may not be opened, until a decision has been taken under subregulation (5) and if new tenders are invited as contemplated in subregulation (5), any tender received prior to the closing date for receipt of any tender which has been objected to, must be returned unopened to the tenderer concerned.

(7) Despite subregulation (6), if a tender has not been marked as required or other unmarked tenders are received, the secretary may at his or her discretion choose to open the tender received in the presence of a member of the local tender board who is a staff member, note the particulars of the tender and the tenderer, reseal the tender and mark it as resealed and return it as stated herein.

(8) If, in respect of a tender which is to be returned in terms of subregulation (7), the name and address of the tenderer concerned is not known, the secretary with the approval of the chairperson, may destroy that tender and record the method, date and place of destruction before new tenders are invited.

Contents of applications for prequalification

- 15.** An application for prequalification contemplated in regulation 13 must -
- (a) be made to a local tender board in such a manner and form and within such period of time as may be determined by a local tender board; and
 - (b) be accompanied by such documents and information as a local tender board may require in the particular case to enable it to select potential tenderers.

Final invitation to tender

16. If applications for prequalification contemplated in regulation 13 have been invited, a local tender board must restrict its final invitation to tender to those potential tenderers selected in accordance with regulation 15 and regulation 13 does not apply in such case.

Title of tender

- 17.** A title of tender must as far as practicable contain the following information -
- (a) the instructions for preparing tenders;
 - (b) the technical and quality characteristics of the goods to be procured or services to be rendered or property to be disposed of or the nature of rights to be acquired or granted, including, if appropriate, technical specifications, plans and drawings;
 - (c) the currency in which the tender price is to be formulated and quoted;
 - (d) the manner, place and closing date for submission of tenders;
 - (e) the period of time during which tenders must be in effect;
 - (f) securities to be furnished in respect of tenders and conditions for refund or return of such securities;
 - (g) a name and reference number by means of which the tender may be identified;
 - (h) the reference to standard contract documentation and specific conditions of tender to be entered into and specifications to be met; and
 - (i) the time, place and venue or site of compulsory pretender meetings or site visits and the requirements relating to such meetings and site meetings.

Examination, evaluation, comparison and non-acceptance of tenders

18. (1) A local tender board may at any time request any tenderer to clarify his or her tender and submit additional information or documentation or security, in such manner as may be determined by the local tender board, in order to assist the local tender board in the examination, evaluation and comparison of tenders, as long as such clarification, additional information or documentation or security does not alter or vary the tender price, tender delivery period or contain a major deviation from the tender invited.

- (2) A local tender board may not consider a tender unless -
 - (a) the tender complies with all the characteristics, terms, conditions and other requirements set out in the invitation to tender as contemplated in regulation 17; or
 - (b) if the tender does not so comply, the non-compliance consist in the opinion of the local tender board of a minor deviation that does not materially alter or depart from such characteristics, terms, conditions or other requirements.
- (3) A local tender board may, with due regard to subregulation (2), not accept a tender -
 - (a) if the tenderer who submitted the tender does not qualify as such in terms of the conditions of tender set out in the invitation to tender;
 - (b) if the tenderer fails to comply with a request under subregulation (1); or
 - (c) if in the opinion of the local tender board, the tenderer has resorted to corrupt practices with a view to influence the local tender board in the acceptance of the tender, in which case the reasons for rejection of the tender must be kept on record by that board.
- (4) A local tender board must -
 - (a) in examining a tender give consideration to the capacity, experience, integrity and financial status of the tenderer; and
 - (b) in comparing tenders give effect to the preference policy of the local authority council concerned to redress social, economic and educational imbalances in a democratic society and to encourage industrial and commercial interests in Namibia.
- (5) If a local tender board does not follow a recommendation of a relevant department, division or section of a local authority made under regulation 49(1) or does not accept or elects not to adhere to the evaluation of a tender or tenders from among the tenders submitted to it or elects to deviate from conditions of tender, the local tender board must provide the head of that department, division or section concerned the opportunity to clarify and address the local tender board concerned, on the evaluation and recommendations made under regulation 49(1);
- (6) If local tender board after hearing representations made under subregulation (5) still does not accept the evaluation or recommendations under regulation 49(1), it must keep the reasons for not accepting the evaluation and recommendations on record.
- (7) All tenders submitted to a local tender board must be opened by that board in public.

Acceptance of tenders, and entry into force of agreements

- 19.** (1) A local tender board, in every particular case, must -
 - (a) notify the tenderers concerned in writing of the decision to withdraw or extend or of the acceptance or rejection of their tenders, as the case may be, and the name of the tenderer whose tender has been accepted by a local tender board must be made known to all the other tenderers; and
 - (b) give, at the written request of a tenderer and within a period of 30 days after receipt of such written request, reasons for the withdrawal or extension of or the acceptance or rejection of his or her tender.

- (2) If, in terms of an invitation to tender -
- (a) a written agreement is required to be entered into after the acceptance of a tender, the local tender board and the tenderer concerned must enter into such an agreement within a period of 30 days after the date on which that tenderer received written notice of the acceptance of his or her tender in terms of subregulation (1)(a), or within such extended period of time as a local tender board may determine;
 - (b) a written agreement is not required to be entered into, an agreement comes into force on the date on which the tenderer concerned is notified in terms of subregulation (1)(a) of the acceptance of his or her tender.
- (3) If, in the circumstances contemplated in subregulation (2)(a), the tenderer fails to enter into an agreement within the period of time determined by that subregulation, or if that period of time has been extended by the local tender board, within the extended period of time, or if the tenderer, when required to do so, fails to furnish the required security for the performance of the agreement, the local tender board may withdraw, in writing addressed and delivered to the tenderer, its acceptance of the tender concerned and may -
- (a) accept any other tender from among the tenders submitted to it; or
 - (b) invite tenders afresh.
- (4) It is an implied term of any agreement entered into or which came into force under subregulation (2) that the person to whom the tender has been awarded to may not assign or subcontract any portion of the goods to be supplied or services to be performed under the agreement without the prior written approval of the local tender board, unless the contract specifically intended the subcontracting of the goods or services to be rendered.
- (5) A local tender board may not agree to the subcontracting or assigning of more than 50% of the value of any goods to be supplied or services to be performed under an agreement, unless the tenderer has obtained the consent of the local authority council to the subcontracting or assignment.
- (6) Subject only that a written agreement entered into under subregulation (2) conforms to the terms and conditions of the award of the tender it is not be invalid for want of conforming with any other requirement of these regulations as to the legal description of the local tender board, the local authority council or the lack of authority of the person signing the agreement, as the case may be.

Exemption from tender procedures

- 20.** (1) If, in respect of the procurement of goods and services for, or the letting, or hiring of anything or the acquisition or granting of any right for or on behalf of, or the disposal of property of, a local authority council -
- (a) the estimated value thereof does not exceed -
 - (i) N\$500 000 in the case of a municipal council of a municipality referred to in Part I of Schedule 1 to the Act;
 - (ii) N\$100 000 in the case of a municipal council of a municipality referred to in Part II of Schedule 1 to the Act;
 - (iii) N\$50 000 in the case of a town council; or

- (iv) N\$25 000 or a village council.
 - (b) the person with whom an agreement has to be entered into is -
 - (i) local authority council, regional council or other statutory body in Namibia;
or
 - (ii) the government of, or any local authority council, regional council or other statutory body in a country other than Namibia,
 - (iii) a member of a profession that the local tender board either specifically or generally believes that it is not in the best interests of the local authority council to call for tenders, approved by the local authority council concerned;
or
 - (c) a local tender board in any particular case for good cause deems it impracticable or inappropriate to invite tenders, a local tender board need not comply with regulation 13.
- (2) A local tender board concerned must in the application of subregulation (1)(c) keep the reasons for not inviting tenders on record.

PART 4 MISCELLANEOUS MATTERS RELATING TO TENDERS

Administrative work

21. (1) All administrative work in respect of the invitation, receipt and acceptance of tenders, including the payment and receipt of moneys or security, or administrative work in connection with the exercise of the powers and the performance of the functions of a local tender board prior to contract implementation, must be performed by staff members of the local authority council concerned designated by the chief executive officer.

(2) Despite the provisions in subregulation (1) the execution and control of any tender for the provision of goods or services must be under the control of the department for whom the services are being procured and all administrative work in respect of the entering into of contracts, the contract implementation, including the payment and receipt of moneys, performance evaluation of contractors, variations, termination and security, must be performed by the head of the department concerned or staff members designated by the head of the department.

(3) The chairperson may execute any document on behalf of a local tender board.

(4) Any contract to be entered into by a local tender board pursuant to a resolution of the local tender must be signed by the chairperson of the local tender board or in his or her absence by the vice-chairperson and be co-signed by the head of the department, division or section concerned and any contract so signed is deemed to have been duly executed on behalf of the local tender board under these regulations.

Expenditure

22. All expenditure in connection with the exercise of the powers and the performance of the functions of a local tender board must, subject to these regulations or to an agreement entered into under these regulations, be defrayed from moneys appropriated by the local authority council concerned for that purpose.

Price preferences

23. (1) A local tender board must, in comparing tenders, give effect to the policy of the local authority council concerned referred to in regulation 18(4)(b) by applying, as the circumstances in each particular case may require, the price preferences specified in Annexure A in respect of all tenders which are considered by a local tender board.

(2) If a tenderer qualifies for price preferences on more than one basis, all such preferences must be granted to the tenderer and, when considering the tender, the tender price must be reduced with an amount determined in accordance with the formula

$$A = \frac{PP \times TP}{100}$$

in which formula -

- (a) "A" represents the amount to be determined;
- (b) "PP" represents the total percentage of all price preferences granted in respect of the tender; and
- (c) "TP" represents the tender price.

(3) A tenderer must in order to be considered for any price preference in terms of this regulation submit to a local tender board the required information on a form similar to the form contained in Annexure B.

(4) Despite anything to the contrary in these regulations a local tender board must allow price the price preferences referred to in subregulation (1) only up to -

- (a) a maximum of 10% of the total price tendered in any single tender; and
- (b) in no single tender more that a total price preference of-
 - (i) N\$500 000 in the case of a municipal council of a municipality referred to in Part I of Schedule 1 to the Act;
 - (ii) N\$100 000 in the case of a municipal council of a municipality referred to in Part II of Schedule 1 to the Act;
 - (iii) N\$50 000 in the case of a town council; or
 - (iv) N\$25 000 or a village council.

Costs of materials

24. (1) In calculating the costs of materials grown, produced or manufactured in Namibia, only the following costs may be included, namely -

- (a) the costs of local materials, including the costs of waste materials lost in the process of the manufacture of goods, as represented by their delivered price at the factory and used directly in the manufacture of the goods, except that -
 - (i) if the materials directly used in the manufacture of goods are not wholly produced in Namibia, the goods must in the calculation be applied only to the extent of their proportionate local content; and

- (ii) locally manufactured materials or components which have been temporarily exported for further manufacture, must on return to the country of final manufacture be regarded as 100 per cent imported goods for the purpose of determining the local contents of any goods; and
- (b) the costs of labour directly involved in the manufacture of goods, which direct labour costs do, in addition to salaries and wages paid in respects of such labour, include -
 - (i) leave, except cash in lieu of leave;
 - (ii) salaries for foremen and supervisors related to the process of manufacture;
 - (iii) overtime payments at normal rates; and
 - (iv) incentive bonuses if predetermined,

but do not include cash in lieu of leave, overtime payments at above normal rates, any portion of salaries for foremen and supervisors not related to the process of manufacture, incentive bonuses not predetermined, pension contributions, maintenance costs, fringe benefits and business overheads.

(2) The manufacturing costs of goods must be determined in accordance with the costs arising from normal business practices, operating procedures and level of production in the industry concerned as incurred over a period of not less than 90 days, and such costs of goods in their final form of manufacture based on actual costs, charges and expenses incurred in the manufacturing process, including the costs of putting the goods up in their retail packages and the costs of such packages, but, if in the opinion of a local tender board or a committee, as the case may be, any costs, charge or expenses has not been incurred by the manufacturer at the normal open market price, a local tender board may assess the amount of that costs, charge or expenses on the basis of price, in order to determine the manufacturing costs of the goods concerned.

(3) In determining the local content of any goods manufactured, whether wholly or partly from -

- (a) locally produced or manufactured materials or components, the local content of such locally produced or manufactured materials or components must be determined and apportioned in accordance with these regulations;
- (b) imported materials, the origin of any charges incidental to the delivery of the imported materials must be regarded as that of the imported materials, and any information which a local tender board or a committee, as the case may be, may require for the purposes of determining the local content of the manufacturing costs of any goods must be furnished to the local tender board or committee in such form and be certified in such manner as the parties concerned may deem necessary to ensure accuracy and clarity.

(4) In this regulation and in regulation 25 -

“direct labour” means any procedure which is applied to input materials from which a product is manufactured, from the time the materials have first come to hand of the work force actually manufacturing the product to the time the finished product is put up in retail package, but does not include any procedure of designing, pattern making or dye processing; and

“direct materials” does not include water (provided it is not part of the final product), electricity, other consumable items and items for staff benefits.

Manufacturing costs

25. (1) The manufacturing costs of goods include, subject to subregulation (2) -
- (a) the costs of imported materials, including the costs of waste materials lost in the process of manufacture, as represented by the landed costs of the materials at the factory, including any charges incidental to the delivery of such materials to the factory, but excluding any duty thereon paid by the manufacturer, and the costs of imported materials, whether or not imported by the manufacturer, is the price as delivered at the factory;
 - (b) the costs of the local materials, including the costs of the waste materials and materials lost in the process of manufacture, as represented by price as delivered at the factory;
 - (c) the costs of direct labour, as represented by the wages paid in respect of labour directly involved in the manufacture of the goods as contemplated in these regulations;
 - (d) the costs of manufacturing expenses relating directly to the goods as represented by -
 - (i) the operating costs of the machines used in the manufacturing of the goods;
 - (ii) the expenses incurred in the cleaning, drying, polishing, pressing or any other process, as may be necessary for the finishing-off of the goods; and
 - (iii) the costs of packaging the goods in retail packages and the costs of such retail packages, but excluding any additional costs relating to the packaging the goods for transportation or export, including the costs of any such additional packaging materials; and
 - (e) the overhead manufacturing costs, as represented by -
 - (i) rental, rates and taxes and insurance charges connected directly to the factory;
 - (ii) indirect labour charges, including salaries paid to factory managers, wages paid to foremen, examiners and testers of the goods and fees paid to efficiency advisers;
 - (iii) charges in respect of the supply of electricity and other power and water, and other service charges directly connected to the manufacturing costs of the goods;
 - (iv) consumable stores, including minor tools, grease, oil and other incidental items and materials used in the manufacture of the goods;
 - (v) depreciation and maintenance of factory buildings, plant, machinery, tools and other items used in the manufacture of the goods; and
 - (vi) the costs of food supplied to factory workers, employees' compensation and insurance premiums paid, and contributions made to manufacturers' associations.
- (2) The manufacturing costs of goods do not include -

- (a) administration expenses, as represented by -
 - (i) office expenses, office rent and salaries paid to accountants, clerks, managers, and other executive personnel;
 - (ii) director's fees, other than salaries paid to directors who act in the capacity of factory managers;
 - (iii) expenses relating to keeping or obtaining of statistics in respect of the manufacture of the goods; and
 - (iv) expenses relating to investigations, experiments and feasibility studies;
- (b) marketing expenses, as represented by -
 - (i) the costs of soliciting and securing orders, including advertising charges and commission or salaries paid to agents and salesmen; and
 - (ii) expenses incurred in the making or giving of designs, estimates and tenders;
- (c) distribution expenses, other than those referred to in paragraphs (a) and (b), as represented by all the expenditure incurred after the goods have left the factory, including -
 - (i) the costs of any materials and payment of wages incurred in the packaging of the goods for export;
 - (ii) warehousing expenses incurred in the storage of manufactured goods; and
 - (iii) the costs of transporting the manufactured goods to their destinations; and
- (d) charges not directly attributed to the manufacture of goods, including -
 - (i) any duty paid on imported raw materials;
 - (ii) any excise duty paid on raw materials produced in the country of manufacture of the goods; and
 - (iii) any royalties paid in respect of patents, special machinery or designs.

Liabilities

26. (1) All stamp duties, bank charges, bank interest and other similar charges payable in respect of an agreement must be paid by the contractor concerned,

(2) If an agreement is cancelled by or on behalf of a local authority council in the exercise of its rights under these regulations, under any other law or under the agreement concerned, or for any other valid reason, the contractor concerned is liable to pay to the local authority council concerned all expenses, losses and damages incurred or suffered by that local authority council as a result of such cancellation, and the local authority council is entitled to recover any amount due and payable under the agreement or due and payable by law.

Non-compliance with title of tender or agreement, or delay in performance of agreement

27. (1) Unless otherwise provided, but subject to this regulation -

- (a) in a title of tender, a tenderer -
- (i) who amends or withdraws his or her tender after the closing date for receipt of tenders but before he or she has been notified of its acceptance; or
 - (ii) who fails to enter into an agreement or to furnish security in the circumstances contemplated in regulation 19(3),

is liable to pay to the local authority council concerned all expenses incurred by that local authority council by having to invite tenders afresh or to make other less favourable arrangements;

- (b) in an agreement, a local tender board may -
- (i) if the contractor concerned fails or has failed to comply with any of the terms and conditions of the agreement or performs or has performed unsatisfactorily under the agreement, in addition to any other legal remedy it may have, cancel the agreement;
 - (ii) if the contractor concerned fails to furnish any goods or services within the period of time stipulated in the agreement -
 - (aa) act in accordance with subparagraph (i); or
 - (bb) make arrangements for the furnishing of goods or services of similar quality and up to the same quantity in lieu of the goods or services not furnished or rendered under the agreement,
 - (cc) in the case of the late delivery of goods or services levy a penalty as determined by the local tender board and contained in the tender title or contract,

and recover any expenses, loss or damages incurred or suffered by the local authority council from that contractor in accordance with subregulation (2).

- (2) If -
- (a) an agreement is cancelled under subregulation (1)(b)(i) or (ii), the contractor concerned is liable to compensate the local authority council concerned in accordance with regulation 26(2);
 - (b) arrangements contemplated in subregulation (1)(b)(ii)(bb) are made, the contractor concerned is liable to compensate the local authority council concerned for any detrimental price differences or any other damages or loss suffered by that local authority council,

but if the contractor satisfies the local tender board or the local authority council concerned, as the case may be, in terms of subregulation (4) that the delay in the furnishing of goods or services is the direct result of strikes, lock-outs, riots, accidents in connection with machinery, natural disasters or storms or other circumstances which could not have been foreseen or prevented by the contractor, the contractor is not so liable to compensate the local authority council.

(3) Any compensation or penalties payable to a local authority council in terms of subregulation (2)(b) may be recovered from moneys (if any), owing to the contractor by the local authority council concerned in respect of goods or services furnished or rendered or to be furnished

or rendered under the agreement concerned, or from any other moneys owing to the contractor by the local authority council, or by means of proceedings in any court of law having jurisdiction.

- (4) If a delay referred to in subregulation (2)(b) is likely to occur, a contractor must -
- (a) furnish in writing and without delay full particulars of the particular circumstances to the local tender board or to the local authority council concerned, as the case may be; and
 - (b) notify the local tender board or the local authority council concerned, as the case may be, of the period of time of the delay anticipated.

(5) If head of a department, division or section acting under regulation 21, makes a recommendation to the local tender board or efficiency committee to exercise its respective powers under subregulation (1)(a) or (b)(i) or (ii) and the local tender board or efficiency committee fails to take action under subregulation (1)(a) or (b)(i) or (ii), the local tender board or efficiency committee concerned must keep on record the reasons for not taking such action under subregulation (1)(a) or (b)(i) or (ii), but the head of a department, division or section may approach the local authority council for a directive under regulation 6(2).

(6) A directive referred to in subregulation (5) may instruct the local tender board to reconsider its decision on the grounds of non-compliance with these regulations or considering any fact which the local tender board in the opinion of the local authority council failed to consider or failed to consider material if it had considered it, as the case may be.

Incorrect preferences

28. If a tender has been accepted on the strength of a preference granted in respect of the production, manufacture or assembly of goods which, after the acceptance of the tender is proven to have been an incorrect preference based on incorrect information furnished by the tenderer, a local tender board may, in addition to any other legal remedy it may have -

- (a) recover from the tenderer any expenses, loss or damages incurred or suffered by a local authority council as a result of the acceptance of the tender on the strength of such incorrect preference;
- (b) by written notice sent to the tenderer by prepaid registered post addressed to the tenderer's last known address, impose on the tenderer a penalty not exceeding five per cent of the monetary value of the tender, which penalty constitutes a debt due to the local authority council and may be recovered from any moneys (if any) owing to the tenderer by the local authority council; or
- (c) recover the expenses, loss or damages incurred or suffered referred to in paragraph (a), and impose the penalty referred to in paragraph (b).

Corrupt practices, theft, lobbying, promise or offer of a bribe, commission, gift, loan, benefit or other compensation by tenderer or contractor

- 29.** (1) If a local tender board is convinced that -
- (a) a tenderer, in relation to the acceptance of a tender, or a contractor, in relation to the entering into of an agreement, has lobbied the acceptance of a tender, or has been involved in any corrupt practice as defined in the Anti-Corruption Act, 2003 (Act No. 8 of 2003), or has promised, offered or given a bribe, commission, gift, loan, benefit or any other compensation whatsoever to a member or staff member or to any

other person, or has caused or prompted such bribe, commission, gift, loan, benefit or compensation to be offered or given by any other person;

- (b) a tenderer or contractor has in relation to the acceptance of a tender or the entering into of an agreement or during the duration of the agreement, as the case may be, has been involved in any corrupt practice as defined in the Anti-Corruption Act, 2003 (Act No. 8 of 2003), or has been involved in theft or acted in a fraudulent manner or in bad faith or in any other improper manner, including the furnishing of incorrect information by or on behalf of the tenderer; or
- (c) a tenderer or contractor has, in the performance of an agreement entered into with a local authority council, failed to comply with any statutory requirement or applicable legislation in connection with such agreement and has as a result thereof been convicted of an offence,

the local tender board may, in addition to any other legal remedy it may have -

- (i) in the case of a tenderer, in writing addressed to the tenderer, at any time withdraw its acceptance of the tender;
- (ii) in the case of a contractor, in writing addressed to the contractor, at any time cancel the relevant agreement and recover, in accordance with regulation 26(2), any expenses, loss or damages incurred or suffered by the local authority council.

(2) Regulation 28 does, subject to necessary changes required by context, apply in relation to the withdrawal by a local tender board of its acceptance of a tender under subregulation (1).

Death of contractor, sequestration of contractor's estate, placement under judicial management or winding-up of contractor

30. If a contractor dies, becomes insolvent or is placed under judicial management or is being wound-up, a local tender board may subject to the Administration of Estates Act, 1965 (Act No. 66 of 1965), the Insolvency Act, 1936 (Act No. 24 of 1936) or the Companies Act, 2004 (Act No. 28 of 2004), respectively, or any other applicable law, cancel any agreement entered into with the contractor and, if appropriate, lodge a claim contemplated in regulation 26(2) in accordance with any such applicable Act or other law against the deceased estate or insolvent estate, as the case may be, of the contractor.

Fees payable

31. A local tender board may determine the fees which are payable in respect of the furnishing by the board of prints, specifications or tender documents, or copies thereof, referred to in these regulations.

PART 5

GENERAL RULES RELATING TO TENDERS AND TENDER PROCEDURES

Invitation to tender and applications for prequalification

32. (1) A local tender board MUST in accordance with regulation 13 invite tenders or applications for prequalification only within Namibia, but a local tender board may in such manner additionally or by way of alternative means or manner, electronically or otherwise, as it may determine "advertise or otherwise", circulate an invitation to tender or for applications for prequalification outside Namibia, if circumstances so require.

(2) Subject to regulation 35, a local tender board must in addition to a publication in terms of section 13 display, as from the date of publication thereof until the closing date of the tender, such notice on the notice board or website of the local tender board concerned.

Tender documents to be made available by local tender board

33. A local tender board must at the request of a tenderer, and against payment of the fee per tender document as determined under regulation 31, make the appropriate tender documents available to the tenderer.

Reference to certain specifications

34. A title of tender may not make reference to any trade mark or trade name or to a specific product, except when used in conjunction or association with the words “similar to” or “equal to”, or any other words to indicate the style, type, characteristics or quality of the goods to be procured or services to be rendered by the tenderer.

Determination of closing date for submission of tenders

- 35.** (1) If a local tender board considers that -
- (a) goods will be supplied from stock readily available in Namibia or will be manufactured from materials or components grown, produced or manufactured in Namibia, that board must determine the closing date for the submission of tenders to be a date not exceeding 30 days, but not less than 21 days, after the date of the only or last publication of the invitation to tender;
 - (b) goods will not be supplied from stock readily available in Namibia or will not be manufactured from materials or components grown, produced or manufactured in Namibia, that board must determine the closing date for the submission of tenders to be a date not exceeding 60 days, but not less than 30 days, after the date of the only or last publication of the invitation to tender,

in terms of regulation 32.

(2) A local tender board may, notwithstanding subregulation (1), at any time before the closing date determined under paragraph (a) or (b), as the case may be, of subregulation (1) -

- (a) of its own accord; or
- (b) at the written request of a tenderer,

extend the closing date with a period of time not exceeding 30 days, if that board is satisfied that -

- (i) such an extension will not be prejudicial to the interests of tenderers; and
- (ii) it is just and equitable to do so in any particular case.

Tender prices and delivery periods

- 36.** (1) Tender prices must -
- (a) be quoted in the currency of Namibia unless otherwise specified in the invitation to tender; and
 - (b) be the total net value of the goods to be furnished or services to be rendered.

(2) A local tender board may give priority to tenderers who tender firm prices for the duration of an agreement and for delivery within a specified period of time.

(3) A tenderer may not in a tender use the words “soonest” or “earliest”, or similar words, to indicate or refer to any material date.

(4) If an invitation to tender does not indicate the basis for calculation of price adjustments, a tenderer who does not tender a firm price must indicate whether -

(a) the adjustment in the tender price will be in the same ratio as the adjustment in the cost price; or

(b) the adjustment in the tender price will be equal to the amount of the adjustment in the cost price.

(5) Subregulation (4)(b) applies in all cases where a tenderer does not specify any conditions.

(6) A tenderer must, within 60 days after the coming into operation of any tender price increase or tender price decrease, inform the local tender board by written notice of any such increase or decrease, as the case may be.

(7) In calculating tender price adjustments in relation to cost prices, the cost prices which were applicable seven days prior to the closing date and time of a tender must be taken as basis for such calculations.

(8) A local tender board may request from a tenderer a certificate, invoice or voucher issued by the supplier concerned as proof of a cost price increase or decrease.

General agreements

37. (1) A local tender board may enter, if it considers it desirable and notwithstanding any provision of these regulations, into a general agreement with any person for -

(a) a specified quantity of goods which may not be varied without the mutual consent of the parties to such an agreement;

(b) an estimated quantity of goods subject to an increase or decrease of 10 per cent;

(c) a maximum quantity of goods if the minimum quantity ordered cannot be guaranteed, but the maximum quantity may not be exceeded without the mutual consent of the parties to such an agreement; or

(d) an unspecified quantity of goods or an estimated quantity of goods not guaranteed.

(2) A local tender board must indicate in an invitation to tender the terms and conditions of a general agreement to be entered into under subregulation (1).

Samples

38. (1) A local tender board may, if it furnishes a potential tenderer at the request of the tenderer with a sample of any item to be supplied by the tenderer, do so at a fee to be determined by that board.

(2) A tenderer must, if a local tender board requires a tenderer to furnish a sample for inspection and examination in support of a tender -

- (a) mark the sample with -
 - (i) the tender number;
 - (ii) the item number of the sample; and
 - (iii) the tenderer's name and address; and
- (b) furnish samples in support of a tender at the tenderer's own expense and risk.

(3) A tenderer must submit a tender and, if applicable, a sample referred to in subregulation (2), to the addressee specified in the invitation to tender so as to reach that address on or before the closing date and time relating to such tender.

- (4) A local tender board may -
- (a) purchase, at the tendered price, a sample submitted to it in terms of subregulation (3);
 - (b) reject a tender which is not accompanied by the required sample or samples.

(5) If a local tender board does not purchase a sample as contemplated in subregulation (4)(a), that board must at its own expense return the sample to the tenderer at any address within Namibia furnished by the tenderer in the tender.

(6) The return of a sample in terms of subregulation (5) to a tenderer is at the tenderer's risk.

- (7) If, in testing or examining a sample, a local tender board finds that the sample is -
- (a) of no or of very little value;
 - (b) destroyed; or
 - (c) worthless or damaged extensively,

that board is not liable for the cost of the sample unless otherwise specified in the invitation to tender.

- (8) A local tender board may not -
- (a) return to a tenderer a sample made from materials supplied by that board;
 - (b) accept liability for the cost of making a sample,

unless otherwise specified in the invitation to tender.

(9) A tenderer may not, without the prior written approval of a local tender board, furnish goods of which the characteristics differ from those of the sample submitted by that tenderer and agreed to by that board.

Determination of period for acceptance of tenders

39. (1) A local tender board must specify in a title of tender the period of time during which the tenders may be accepted by the local tender board.

(2) The period of time contemplated in subregulation (1) is calculated from the day immediately following the closing date and time for submission of a tender, but does not include Saturdays, Sundays or public holidays.

Submission of tenders

40. (1) A tenderer must submit a tender under sealed cover, with the tender number endorsed on the cover, not later than the closing date and time specified in the invitation to tender and in case of an electronic tender the tender must meet the requirements as provided in the title of tender.

(2) A local tender board may not consider a tender if more than one tender number or an incorrect tender number is endorsed on the cover thereof

Closing date and time of tenders

41. (1) A local tender board must specify in the invitation to tender the closing date and time for the submission of tenders.

(2) Subject to subregulation (3), all formal and quotation tenders close at 11h00 and all annual and store tenders close at 14h30 on the closing date for the submission of tenders.

(3) If the closing date for the submission of tenders falls on a Saturday, Sunday or public holiday, formal and quotation tenders may be received until 11h00, and annual and store tenders until 14h30, of the working day following such closing date.

Telegraphic, faxed or electronic and late tenders

42. (1) A local tender board may, subject to subregulation (2), consider a tender received by telegraph or fax on or in an approved electronic manner to an identified recipient before the closing date and time, provided the tender -

- (a) bears or reflects the name of the tenderer, the tender number and the price and terms of delivery of goods or services in respect of each item tendered for; and
- (b) is made on the prescribed tender documents or in a manner acceptable to that board.

(2) A tenderer who has submitted a tender by telegraph or fax or electronically in the approved format must, within a period of seven days after the closing date and time for submission of the tender, submit the original tender documents, duly completed, to the local tender board concerned.

(3) A local tender board may not consider, unless no tenders have been received by a local tender board on the closing date and time, but subject to subregulation (4), tenders received after such closing date and time.

(4) A local tender board may, despite subregulation (3), accept a tender received after the closing date and time if that board is satisfied that -

- (a) the tender was delayed by the postal service;
- (b) in the case of a telegraphic tender, the telegraph was received by the addressee's post office on or before the closing date and time; or
- (c) the tender was submitted after the closing date and time as the direct result of circumstances which the tenderer could not reasonably have foreseen or prevented.

(5) If a tenderer fails to comply with subregulation (2), his or her tender must be disqualified from acceptance by the local tender board concerned.

Tenders received by local tender board

43. (1) A local tender board must, until the closing date and time, keep unopened and in safe custody all tenders received under sealed cover or sealed in terms of subregulation (2)(b).

(2) If a tender is received in any form or condition other than in a sealed cover, or is received without the required endorsements on the cover, the secretary must

- (a) ascertain the tender number;
- (b) seal the tender; and
- (c) make a note on the cover of the tender indicating -
 - (i) the name and address of the tenderer;
 - (ii) the date and time of receipt of the tender;
 - (iii) the tender number and closing date; and
 - (iv) the condition in which the tender was received.

Opening of tenders

44. The secretary of a local tender board must subject to any conditions to which the tender is subject to -

- (a) open all tenders in public, as soon as practicable after the closing date and time; and
- (b) subject to subregulations 14(c) and (d) read out in public, at the request of a tenderer or of any other member of the public, the tender prices for building services and cognate works, or for civil engineering services.

Tenders for portion of items or specified quantities

45. A local tender board may consider a tender by a tenderer who does not tender for all the items specified in the invitation to tender, or who tenders for only a portion of the quantity so specified.

Consideration of tenders

46. A local tender board must consider, subject to these regulations, all tenders duly submitted to it in terms of these regulations.

Comparison of tenders

47. A local tender board must -

- (a) compare the tender prices of all tenders submitted to it; and
- (b) if applicable, adjust delivery charges or any other charges, before applying any price preferences to tenders.

Domestic value

48. (1) A local tender board may, if the goods offered originate from a country other than Namibia, require the tenderer to furnish the domestic value of the goods offered in the currency of Namibia.

(2) If the domestic value furnished in terms of subregulation (1) is higher than the tendered price, a local tender board must calculate the tender by using the domestic value.

(3) In this regulation “domestic value” means, in relation to goods imported or to be imported into Namibia, the market price at which such or similar goods are, at the time of tendering, freely offered for sale in the usual wholesale quantities and in the ordinary course of trade to all purchasers in the principal markets of the country from which the goods are imported or are to be imported, including -

- (a) any royalty and the costs of packaging and packages ordinarily used in those markets;
- (b) additional costs of packaging and packages for export carriages to the port of shipment or other place of final dispatch in that country; and
- (c) all other expenses incidental to placing the goods on board ship or on any other vehicle at the port or place ready for export to Namibia,

but does not include -

- (i) excise duty, export tax, sales tax or value added tax imposed; or
- (ii) drawbacks, refunds, rebates or remissions of customs duty granted,

by the Government of that country in terms of its laws relating to the export of such goods.

Recommendation by department, division or section

49. (1) A local tender board must, after having opened and listed all tenders, submit the tenders to the relevant department, division or section of the local authority concerned which deals with the matter or issue to which the tender relates, for its recommendation, and that department, division or section concerned must make, in writing and as soon as practicable, its recommendation on the tenders concerned.

(2) The head of the department, division or section referred to in subregulation (1) must submit the recommendation made in terms of subregulation (1), together with all the tenders submitted to it in terms of that subregulation, to the local tender board.

(3) If a department, division or section does not recommend the lowest tender from among all the tenders submitted to it, the head thereof referred to in subregulation (2) must -

- (a) in writing certify that the recommendation is made in the best interest of and represents the best value to, the local authority council concerned; and
- (b) give reasons for not recommending the acceptance of the lowest tender.

(4) If only one tender is received and that tender is in terms of subregulation (1) recommended for acceptance, the head of the department, division or section concerned must in the recommendation state whether the tender price is considered fair and reasonable.

Acceptance of tenders

50. (1) A local tender board must, after having brought all tenders to a comparative level and having due regard to regulation 18(4), accept tenders in the following order of priority -

- (a) tenders for goods manufactured entirely from raw materials or produced mainly within Namibia;
- (b) tenders for goods manufactured in Namibia entirely from non-fabricated raw materials or mainly imported materials;
- (c) tenders for goods assembled in Namibia from components entirely or mainly imported;
- (d) tenders for imported goods from local suppliers who are in a position to give expert advice or after sales service;
- (e) tenders for goods from imported stock held in Namibia;
- (f) tenders from overseas suppliers, but preferably suppliers with branches and stock in Namibia.

(2) A local tender board must as far as practicable in respect of tenders for the furnishing of perishable goods, but with due regard to regulations 18(4) and 23, accept the tender of the tenderer who is at, or closest to, the place where such goods are required to be delivered.

Acceptance of tenders for unspecified quantities

51. If a local tender board accepts a tender for a quantity other than the quantity specified in the invitation to tender, the tenderer may refuse to enter into an agreement if the quantity accepted is -

- (a) less than that for which the tenderer has tendered; or
- (b) more than that for which the tenderer has tendered, but in that case the tenderer may refuse only to the extent of the excess.

Security

52. (1) A local tender board must, subject to subregulation (4), require a successful tenderer to furnish security for the performance in terms of an agreement to be entered into, if-

- (a) any payment is to be made to the local authority council concerned;
- (b) any property of the local authority council is to be handed to a contractor; or
- (c) that board in any particular case for good cause deems it necessary to require such tenderer to furnish security,

(2) The security to be furnished in terms of subregulation (1) must be an amount equal to -

- (a) in the application of subregulation (1)(a), the estimated amount to be paid to the local authority council;
- (b) in the application of subregulation (1)(b), the value of the property of the local authority council which may be in the possession of the contractor at any time;

- (c) in the application of subregulation (1)(c) -
 - (i) 10 per cent of the monetary value of the tender; or
 - (ii) such number of sureties acceptable to that board, but not less than two, as may be required by the board,

whichever security the board may deem appropriate to require in any particular case.

- (3) The security required in terms of subregulation (1) must be in the form of -
 - (a) a guarantee issued by a banking institution, building society or an insurance company registered or incorporated in Namibia and approved by the local tender board concerned;
 - (b) a cash deposit, negotiable Government bonds or stock;
 - (c) in the case of a service contract, a surety bond furnished by the sureties referred to in subregulation (2)(c)(ii); or
 - (d) any other form of security approved by the local tender board concerned.
- (4) A local tender board -
 - (a) must specify, if any security is required to be furnished by a successful tenderer, particulars thereof in the invitation to tender;
 - (b) may reject any security furnished in terms of subregulation (3) for such reasons as it may deem appropriate.

Cession of agreements

53. Without the prior written approval of a local tender board, granted on the recommendation of the department, division or section concerned which deals with the matter to which a tender relates, a tenderer or contractor may not, -

- (a) surrender, transfer, cede, dispose of or sub-let the whole or part of his or her tender or agreement or any interest therein; or
- (b) cede any payment arising out of any agreement,

to any person.

Communication with local tender boards

54. (1) All correspondence to a local tender board, unless specifically intended for the personal attention of the chairperson, must be addressed to the secretary at the address of the local authority council concerned.

(2) All deliveries other than by mail must be made to the office of the secretary of the local tender board concerned.

Availability of regulations

55. Copies of these regulations may be obtained at the address referred to in regulation 54(1).

ANNEXURE A**PRICE PREFERENCES**

(Regulation 23(1))

The price preferences set out below apply in respect of tenders, and a tender may qualify for one or more price preferences, as the case may be:

- (a) Goods produced or manufactured in Namibia:
 - (i) Six per cent, if the goods produced or manufactured have a local content of ten per cent or more but less than 25 per cent of the manufacturing costs of the goods;
 - (ii) ten per cent, if the goods produced or manufactured have a local content of 25 per cent or more but less than 50 per cent of the manufacturing costs of the goods;
 - (iii) 12 per cent, if the goods produced or manufactured have a local content of 50 per cent or more but less than 60 per cent of the manufacturing costs of the goods;
 - (iv) 15 per cent, if the goods produced or manufactured have a local content of 60 per cent or more but less than 75 per cent of the manufacturing costs of the goods;
 - (v) 18 per cent, if the goods produced or manufactured have a local content of 75 per cent or more but less than 90 per cent of the manufacturing costs of the goods;
 - (vi) 20 per cent, if the goods produced or manufactured have a local content of 90 per cent or more of the manufacturing costs of goods.
- (b) Goods assembled in Namibia:
 - (i) Three per cent, if the goods assembled have a local content of ten per cent or more but less than 25 per cent of the total costs of production;
 - (ii) five per cent, if the goods assembled have a local content of 25 per cent or more but less than 50 per cent of the total costs of production;
 - (iii) six per cent, if the goods assembled have a local content of 50 per cent or more but less than 75 per cent of the total costs of production;
 - (iv) eight per cent, if the goods assembled have a local content of 75 per cent or more but less than 90 per cent of the total costs of production;
 - (v) ten per cent, if the goods assembled have a local content of 90 per cent or more of the total costs of production.
- (c) Services rendered by persons domiciled or companies incorporated in Namibia:
 - (i) Five per cent, to persons domiciled or companies incorporated in Namibia in respect of services offered, when a comparison is made to companies incorporated in any country other than Namibia;
 - (ii) five per cent, to persons or companies granted a Certificate of Status Investment under section 7 of the Foreign Investment Act, 1990 (Act No. 27 of 1990), in respect of services offered, when a comparison is made to companies incorporated in any country other than Namibia.

(d) After sales service:

Three per cent, to *bona fide* Namibian dealers or merchants where an after sales service is required in respect of goods to be imported.

(e) Goods conforming to any national or international standard specification:

Three per cent in respect of goods conforming to any national or international standard specification.

(f) *Bona fide* Namibian small scale industries:

(i) Two per cent, if the labour employed by the industry numbers more than ten but less than 25 persons;

(ii) three per cent, if the labour employed by the industry numbers 25 or more persons, but less than 50;

(iii) five per cent, if the labour employed by the industry numbers 50 or more persons.

(g) Tenderer located in communal areas or notified underdeveloped areas:

(i) Two per cent, if the labour employed numbers more than ten but less than 25 persons;

(ii) three per cent, if the labour employed numbers 25 or more persons but less than 50 persons;

(iii) five per cent, if the labour employed numbers 50 persons or more.

(h) *Bona fide* Namibian manufacturing companies:

Two per cent, if a company is incorporated in Namibia with all its share capital beneficially owned by Namibian citizens and the company employs Namibian citizens only.

(i) *Bona fide* Namibian tenderer implementing affirmative action policies:

If in the opinion of a local tender board, based on information furnished to that board by a Namibian tenderer, such tenderer is implementing affirmative action policies and programmes to redress social, economic or educational imbalances in a democratic society, the board may grant a price preference of two to three per cent on the merits of each particular case, based on factors such as structured training programmes, apprenticeship courses of approved standards for labour, technical staff and managerial cadre, substantial employment of women and handicapped persons, and other programmes or activities benefiting disadvantaged Namibian citizens.

ANNEXURE B

PARTICULARS OF TENDERER

(Regulation 23(3))

1. Full names and postal and physical address of tenderer:

.....
.....
.....
.....

2. Origin/registration/trade licence number:

(a) Namibian company/contractor/supplier/trader:

Registration number and date

Trade licence or certificate number and date, and name and address of person who issued the licence or certificate

.....
.....

Financial interests held by a foreigner/foreign company (Furnish details):

.....
.....

(b) Foreign company/contractor/supplier/trader:

Country of registration

Registration number and date

Financial interests held by a Namibian/Namibia company (furnish details):

.....
.....

3. Capital structure:

Total equity capital N\$ _____

(Amount in words): _____

which total equity is made up as follows:

	Amount N\$	Percentage of total capital
(a) Capital owned by Namibians/Namibian companies
(b) Capital owned by foreigners/foreign companies

4 Particulars or business:

(a) Nature of activities:

.....

.....

.....

.....

(b) Is the business, according to the Ministry of Trade and Industry, a small scale industry?
..... (Yes/No)

If yes, give details and furnish documentary proof:

.....

.....

.....

.....

(c) Is the tenderer located in communal areas/underdeveloped areas notified by the Ministry of
Trade and Industry? (Yes/No)

If yes, give details and furnish documentary proof:

.....

.....

.....

.....

5. Organisational structure:
Employees:

Category	Total number	Number of Namibians	Number of formerly disadvantaged Namibians	Number of foreigners
(a) Managing Director/Directors				
(b) Managers				
(c) Office personnel/staff				
(d) Skilled labour				
(e) Unskilled labour				
(f) Contract staff/labour				
Total				
No. of women included in above				
No. of handicapped persons included in above				

6 Buildings and erven:

Area used	(Total area (in square metres))
Area of erf
Area of buildings on erf
Area of buildings used for manufacturing/assembling
Area of buildings used as office space
Area of buildings used for storage

7 Is a subcontractor/sub vendor/sub supplier involved in the performance of the agreement?
..... (Yes/No)

If “yes”, state in an annexure the percentage of the total tender amount being performed by means of subcontracting, etc., and furnish in that annexure full particulars of the subcontractor/sub vendor/sub supplier concerned, including physical address or addresses.

.....
Signature Date

Documents to be attached:

- (1) Copy of registration certificate/trade license.
 - (2) Copy of certificate/document to substantiate any claim as being a small scale industry.
 - (3) Copy of certificate/document to substantiate any claim regarding location in communal areas/underdeveloped areas.
 - (4) Information regarding subcontractor/subvendor/subsupplier.
 - (5) Documentary proof regarding training programmes, apprenticeship courses, affirmative action programmes or activities, or other programmes or activities benefiting disadvantaged or handicapped Namibian citizens.
-